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April 2, 2001

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VIA ECFS FILING and UPS NEXT DAY AIR MAIL **FCC MAIL ROOM**

Ms. Margalie Roman Salas, Secretary
Federal Communications Commission
Office of the Secretary
445-12th Street, S.W.
Room TW-204B
Washington, D.C. 20554

Re: **I/M/O New Jersey Board of Public Utilities
Petition for Delegated Authority to Implement
Number Conservation Measures
CC Docket No. 99-200, NSD File No. L-00-95**

Dear Secretary Salas:

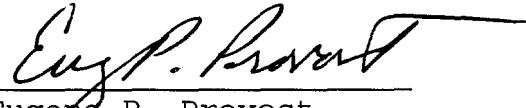
Enclosed please find an original and five (5) copies of the Reply of the New Jersey Board of Public Utilities in Opposition to the Application for Review of Sprint Corporation.

Please file-stamp one copy and return it to me in the enclosed self-addressed stamped envelope. Thank you for your attention in this matter.

Very truly yours,

JOHN J. FARMER, JR.
ATTORNEY GENERAL OF NEW JERSEY

By:


Eugene P. Provost
Deputy Attorney General

EPP:ac

Encl:

cc: Carol J. Murphy, Acting President
Frederick F. Butler, Commissioner
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Number Conservation Measures
CC Docket No. 96-98; File No. NSD-L-00-95

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CC Docket No. 96-98; File No. NSD-L-00-95

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CC Docket No. 96-98; File No. NSD-L-00-95

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CC Docket No. 96-98; File No. NSD-L-00-95

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FCC MAIL ROOM

In the Matter of:

Numbering Resource Optimization)	CC Docket No. 99-200
)	
The New Jersey Board of Public Utilities)	
Petition for Delegated Authority to)	NSD File No. L-00-95
Implement Number Conservation Measures)	

OPPOSITION TO SPRINT'S APPLICATION FOR REVIEW
BY THE NEW JERSEY BOARD OF PUBLIC UTILITIES

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The New Jersey Board of Public Utilities (the "Board"), by its attorneys pursuant to 47 C.F.R. § 1.115(d), hereby replies to Sprint Corporation's ("Sprint's") Application for Review of the Common Carrier Bureau's February 14, 2001 Order¹ granting the Board delegated authority to implement number conservation measures.

In sum, Sprint objects to the authority granted to the New Jersey Board to implement rationing for six months following area code relief, arguing that rationing is contrary to the needs-based program established by the Federal Communications Commission ("Commission") and that it creates a threat to competition.

Rationing of NXXs was discussed in the Commission's Pennsylvania Numbering Order,² in which the Commission advised that a state commission "may order rationing only if it has ordered relief and established an implementation date," but "may not impose rationing on its own to avoid making a decision on area code relief."³ As noted by the Common Carrier Bureau in the New Jersey Delegation Order, the Commission has granted post-area code relief rationing authority in prior orders.⁴ For example, in granting the Florida Public Service Commission authority to implement number conservation

¹ Order, I/M/O Numbering Resource Optimization, et al., CC Docket No. 99-200 et al., NSD File No. L-00-95, DA 01-386 (February 14, 2001) (hereinafter, "New Jersey Delegation Order").

² Memorandum Opinion and Order and Order on Reconsideration, I/M/O Petition for Declaratory Ruling and request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215 and 717 and I/M/O Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, NSD File No. L-97-42, CC Docket No. 96-98 (September 28, 1998) ("Pennsylvania Numbering Order").

³ Pennsylvania Numbering Order at ¶25.

⁴ New Jersey Delegation Order at ¶33.

measures, the Commission expressly granted Florida authority to continue rationing for six months following area code relief.⁵ The Commission determined that

continuation of rationing after area code relief has been implemented does not contradict the Pennsylvania Numbering Order, as the requisite area code relief has, in fact, been implemented. This measure seeks only to provide "breathing room" to state commissions that have just undergone the difficult process of implementing a new area code. Furthermore, a limitation of six months does not have the potential - in contrast to rationing prior to area code relief - to forestall area code relief indefinitely.⁶

This rationale applies equally here. The New Jersey Board has ordered area code relief in the 201, 732 and 973 NPAs effective December 1, 2001.⁷ Therefore, the continuation of rationing for six months after implementation of area code relief in these NPAs does not contradict the Commission's Pennsylvania Numbering Order since "area code relief has been implemented," and such rationing will not have "the potential ... to forestall area code relief indefinitely."⁸ Existing Commission and Common Carrier Bureau precedent supports this delegation of authority to New Jersey.⁹

⁵ Order, I/M/O Florida Public Service Commission Petition to Federal Communications Commission for Expedited Decision for Grant of Authority to Implement Number Conservation Measures, CC Docket No. 96-98, NSD File No. L-99-33, 14 FCC Record 17,506, 17,517-18, ¶¶25-28 ("Florida Delegation Order").

⁶ Florida Delegation Order at ¶27.

⁷ See Decision and Order, I/M/O Lockheed Martin IMS - Report to the Board Regarding Efforts to Provide Area Code Relief for the 201 & 973 Area Codes and I/M/O Lockheed Martin IMS - Report to the Board Regarding Efforts to Provide Area Code Relief for the 732 & 908 Area Codes, Docket Nos. TO98080707 and TO99010034 (March 19, 2001).

⁸ New Jersey Delegation Order at ¶33.

⁹ See, e.g., Florida Delegation Order, FCC 99-249; Massachusetts Delegation Order FCC 99-246; Wisconsin Delegation Order, DA 99-2637; Indiana, Missouri, North

Moreover, post-relief rationing is consistent with the underlying objective of a needs-based verification program, which is to ensure that numbers are not assigned prematurely or inefficiently. As noted by the Commission in its First Report and Order, the requirement to simply certify a need for numbering resources allowed carriers to build excessive inventories for which they do not have an immediate need.¹⁰ To stem such abuse, the needs-based program established by the Commission requires proof from the carriers that they need numbers “when, where and in the quantity requested.”¹¹ In emphasizing the importance of verification procedures, the Commission encouraged the state commissions to “continue to work cooperatively with the NANPA to help ensure that the numbering resources are not prematurely assigned.”¹² Such verification procedures are to “prevent actual or potential abuses of the number allocation process.”¹³ In fact, the six months rationing period will provide the Board the opportunity to review and analyze the utilization data contained in the Numbering Resource Utilization and Forecast forms which have been submitted to NANPA and the states in order to ensure the proper allocation of numbering resources and to minimize the abuse and storing of inventory which would otherwise occur. The Board is currently reviewing the utilization

Carolina, Pennsylvania, Utah and Virginia Delegation Order, DA-00-1616; Louisiana, Maryland, Massachusetts and New Jersey Delegation Order, DA 01-386; West Virginia Delegation Order, DA 01-656.

¹⁰ Report and Order and Further Notice of Proposed Rule Making, In the Matter of Numbering Resource Optimization, CC Docket No. 99-200, FCC 00-104 (March 31, 2000) (“First Report and Order”) at ¶ 89.

¹¹ First Report and Order at ¶ 91.

¹² Id. at ¶ 94.

data submitted on September 1, 2000 and February 1, 2001, and attempting to obtain answers from carriers regarding some of the data. Without resolution of the Board's and NANPA's questions about this data, final verification of carrier utilization data is difficult. In this uncertain period, despite the present needs-based approach to number assignment, six months of post-relief rationing will help minimize the possibility that NXX code applicants with invalid utilization data will inappropriately qualify and receive NXXs. If not prevented, such inappropriate assignment will jeopardize the integrity and durability of the State's numbering resources, the precise goals of needs based allocation procedures.

Moreover, Sprint has not shown how it is actually being harmed or disadvantaged by post-relief rationing. Post-relief rationing for a limited six month period will pose no threat to competition because of its limited period, and should not prevent a carrier who demonstrates need from receiving numbers. With actual experience within the post-relief rationing environment, Sprint may find that there is no harm in such rationing. On the other hand, upon a sufficient showing of actual harm caused by post-relief rationing, the Board will immediately act to review rationing practices and carrier needs, and take appropriate action, if necessary.

Indeed, Sprint's argument that, with the advent of the needs based assignment rules, there is "no basis to believe that the practices of the past will repeat themselves," does not really address the need for post-relief rationing. The Commission is fully aware of the exponential growth of the need for numbering resources in the United States. In

¹³ Id. at ¶99.

light of this growth, the Board fully expects that, even in the "needs based" environment, pent up demand by carriers who have waited for NXXs during the pre-area code relief period, and qualify for number assignment, will all too rapidly deplete NPA numbering resources without rationing.

In New Jersey, as of March 15, 2001, that date of our Board's most recent public meeting, there were 89 competitive carriers authorized by the Board to provide local exchange service. By December 1, 2001, the date when overlay area code relief will become effective in New Jersey's 201, 732 and 973 NPAs, the Board expects the number of authorized carriers to have grown, and expects that many of these carriers will qualify for number assignment because they will also be able to show they are prepared to provide service. The Board is legitimately fearful that pent up demand will result in such large numbers of NXX or thousands block assignments in the first few months after relief that NPAs just relieved might become prematurely exhausted . It is also possible that a disproportionate number of NXXs or thousands blocks could very well be assigned immediately to those carriers in the front of the que waiting for numbers, such that those further back in the que may be disadvantaged.

Accordingly, because the New Jersey Board of Public Utilities has already ordered area code relief, because post-relief rationing for a limited six month period will

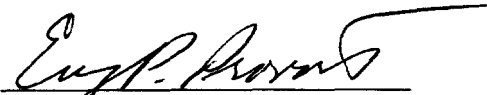
not forestall future area code relief, and because no actual harm caused by post-relief rationing has been shown, Sprint's application for review of the New Jersey Delegation Order should be denied.

Respectfully submitted,

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Dated: April 2, 2001

By:


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